

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-023-R - ORDER NO. 93-599 ✓

JULY 7, 1993

IN RE: Application of South Carolina Electric)	ORDER
& Gas Company for Adjustments in the)	DENYING
Company's Coach Fares and Charges,)	REHEARING,
Routes, and Route Schedules.)	RECONSIDERATION,
)	RECISION,
)	ALTERATION,
)	AND AMENDMENT

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing and Reconsideration of Order No. 93-496, and for Recision, Alteration, or Amendment of Orders 92-929 and 92-781, filed by South Carolina Electric & Gas Company (SCE&G or the Company). For the reasons stated below, this Petition must be denied.

First, the Company states that the Dial a Ride Transportation (DART) service required in Order No. 93-496 constitutes a violation of S.C. Code Ann., §58-5-290, and that the operation of the Company's transit system under the conditions set forth in Order Nos. 93-496, 92-929, and 92-781 would be unjust, unreasonable and non-compensatory. Further, the Company alleges that the resulting transit rates are confiscatory and constitute violations of the Due Process and Taking Clauses of the United States and South Carolina Constitutions.

The Commission has already stated extensively its position contra to that of the Company in Order Nos. 92-929 and 92-781. The Commission has previously held under those Orders that the provision of these services was neither confiscatory, nor did they constitutes violations of the Due Process and Taking Clauses of the Constitutions. Further, these matters are presently under appeal before the Courts. In any event, the Commission sees no reason to change its position on these allegations.

Secondly, the Company alleged that the adoption of the DART service requirements in Order No. 93-496 was arbitrary, capricious and constituted an abuse of discretion. The Company also stated that the conclusion was not supported by substantial evidence on the record as a whole. It should be noted that Order No. 93-496 came as a result of a request for clarification, filed by one of the intervenors in the original bus case. In that request for clarification, the intervenor South Carolina Legal Services Association noted that our Order No. 92-929 stated that existing DART service to the area presently mandated by federal authorities, and those individuals already being served in the Harbison area should continue. The letter went on to state that the Legal Services Association has been contacted by a disabled client presently living in an area where the DART service picked up riders on request. The Legal Services Association stated simply that the spirit of Order No. 92-929 indicated, in its opinion, that SCE&G should continue service in the area, and should provide service to other disabled individuals living in

areas presently served by the DART service. The Commission's Order No. 93-496 simply clarified Order No. 92-929, stating that the more practical view of the matter was to require the DART service to pickup all handicapped individuals in the Lakeside and Woods Edge areas of Harbison areas already being serviced by the DART service. The Commission believes that its conclusions in Order No. 93-496 are simply common sense clarifications of its earlier Order No. 92-929, and are not arbitrary, capricious, or an abuse of discretion, and further, the Commission believes that the Commission's conclusion was supported by evidence presented before it in the original 1992 hearings.

Third, SCE&G alleged that proceeding to a final decision on the matter set forth in Order 93-496 without notice and hearing, constituted a violation of the Administrative Procedures Act, portions of the Utilities Code, and certain clauses of the United States and South Carolina Constitution.

The Commission would note that the original request for clarification by the South Carolina Legal Services Association, dated May 5, 1993, was served on all the original parties to the transit proceeding, including SCE&G. The Commission received no opposition to the letter. Therefore, in the Commission's opinion, it proceeded correctly in ruling on the matter without hearing. No hearing is required in uncontested cases. See, South Carolina Administrative Procedures Act, S.C. Code Ann., §1-23-310, et. seq.

Lastly, the Company stated that Order No. 93-496 contained no findings of fact or conclusions of law supporting the matters

decided therein as required by S.C. Code Ann., §1-23-350. The Commission disagrees with the characterization presented by the Company, and although not delineated as such, believes that Order No. 93-496 contains the requisite findings of fact and conclusions of law. The South Carolina Court of Appeals has stated that Public Service Commission Orders need not contain findings of fact and conclusions of law in any particular format. Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (S.C. App. 1988). In this case, the order contained both, though not delineated as such. Therefore, SCE&G's last contention is without merit.

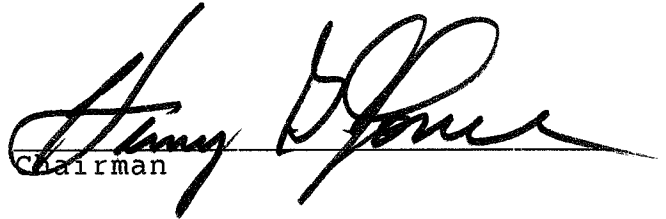
SCE&G also seeks recision, alteration, or amendment of Order Nos. 92-929 and 92-781. The Commission must deny this request since both orders are presently on appeal to the Courts. It would be improper for the Commission to reassume jurisdiction over these Orders under the present circumstances.

IT IS THEREFORE ORDERED THAT:

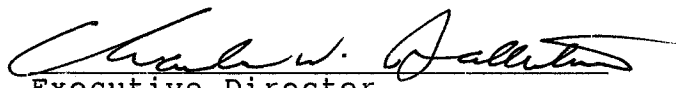
1. The Petition for Rehearing and Reconsideration of Order No. 93-496, and Recision, Alteration, or Amendment of Order Nos. 92-929 and 92-781 is hereby denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director
(SEAL)